

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

RICHARD GREAVES,

Appellant

v.

D-02-654

DEPARTMENT OF CORRECTION,

Respondent

Appellant's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, s. 43, the Appellant, Richard Greaves (hereafter "Greaves" or "Appellant"), is appealing the decision of the Appointing Authority, the Department of Correction (hereafter "DOC" or "Appointing Authority),

demoting him from lieutenant to sergeant on July 25, 2002 for sleeping and resting on numerous occasions while on duty and utilizing a pillow and radio alarm clock between March 7, 2002 and March 20, 2002. The appeal was timely filed. A hearing was held on August 14, 2006 at the offices of the Civil Service Commission. As no written notice was received from either party, the hearing was declared private. Two tapes were made of the hearing. All witnesses, with the exception of the Appellant, were sequestered.

FINDINGS OF FACT:

Twelve (12) joint exhibits were entered into evidence. Based on the documents submitted into evidence and the testimony of:

For the Appointing Authority:

- DOC Lieutenant Robert McGuiness;

For the Appellant:

- Richard Greaves, Appellant;

I make the following findings of fact:

1. The Appellant, Richard Greaves, was a tenured civil service employee of the Department of Correction in the position of Lieutenant at the time of the incidents between March 7, 2002 and March 20, 2002 and had been employed by DOC for approximately twenty-seven (27) years. He is married with two children and was honorably discharged from the United States Marine Corps after performing combat duty in Vietnam. (Testimony of Appellant)
2. At the time of the incidents, the Appellant was “working up”, or serving temporarily, in the position of Captain and was acting as the Shift Commander at the

Massachusetts Treatment Center assigned to the 11:00 P.M. to 7:00 A.M. overnight shift. (Testimony of Appellant)

3. The Massachusetts Treatment Center is located within the Bridgewater Correctional Complex and has a population of civilly committed sexually dangerous persons as well as state prison inmates identified as sex offenders. (Administrative Notice)
4. Inmates are locked down at 9:30 P.M. and the Shift Commander must do roll call and a shift count (of inmates) at 12:00 Midnight or 3:00 A.M. (Testimony of Appellant)
5. Prior to the disciplinary action taken against him on July 25, 2002, the Appellant was suspended for five (5) days on June 29, 1987 for failing to follow department policy regarding an escape incident; suspended for one (1) day on July 9, 1999 for losing a buck knife inside a facility; and suspended for one (1) day on August 11, 2000 for working for the Sheriff's Department while on sick leave. (Stipulated Facts; Exhibit 9)
6. The Appellant has received 15-20 commendations during his tenure at DOC. (Testimony of Appellant)
7. In February 2002, DOC received a complaint from a private vendor with work space at the Treatment Center that their computer was being accessed by individuals other than those employed by the vendor. (Testimony of McGuinness)
8. As a result of the vendor's complaint, DOC installed a hidden camera within a nearby smoke detector pointed at the computer in question. Through this investigation, DOC subsequently determined that one of its employees (not the Appellant) had been inappropriately accessing the vendor's computer. That DOC employee was disciplined for accessing the computer and subsequently filed – and then withdrew--

an appeal with the Commission. (Testimony of McGuiness and Administrative Notice)

9. In the case currently before the Commission, there are no charges that the Appellant, Richard Greaves, ever accessed the vendor's computer. (Testimony of McGuiness)
10. As part of the investigation referenced above, which included a review of the video captured by the hidden camera, DOC observed the Appellant in this case, Richard Greaves, sleeping or resting at the vendor's desk in front of the computer. (Testimony of McGuiness)
11. During the Commission hearing, Lt. McGuiness, the DOC official who conducted the investigation, played and narrated a series of video clips taken between March 6, 2002 and March 20, 2002. (Exhibit 7; Testimony of McGuiness)
12. As the Appellant was assigned to the 11:00 P.M. to 7:00 A.M. shift, the date on each video clip may begin on one day and end on the next calendar day.
13. The first video clip played and narrated by McGuiness at the Commission hearing involved the March 5-6, 2002 shift. McGuiness was unable to definitively identify the DOC employee in the video other than to point out that he had lieutenant bars on his uniform and he was wearing a watch. The Appellant subsequently testified before the Commission that he does not wear a watch. Further, another lieutenant, the other Appellant whose appeal is no longer before the Commission, also has lieutenant bars on his uniform. The first video clip is given no weight as it most likely not the Appellant who is seen in this particular video clip. (Exhibit 7; Testimony of McGuiness & Appellant)

14. The second video clip played and narrated by McGuiness at the Commission hearing involved the March 6-7, 2002 shift. The Appellant's head is clearly visible in the video. During this video clip Greaves enters the workstation with a pillow in hand at 12:50 A.M. and can be observed removing his work boots. He then sits in a chair in front of the computer with his feet extended. At approximately 2:46 A.M., the Appellant leaves the area and then returns and remains there until 5:13 A.M. The video clip does not capture the Appellant's upper body and it can not be determined if the Appellant was sleeping or resting. (Exhibit 7)
15. The third video clip played and narrated by McGuiness at the Commission hearing involved the March 11-12, 2002 shift. At approximately 11:07 P.M., the Appellant can be observed sitting at the work station. He can be observed with a pillow and clock radio. The Appellant can be observed removing his work boots and at approximately 11:33 P.M. he places his feet on the desk. At 12:19:25 A.M., the Appellant puts a pillow on the desk and puts his head down on the pillow. The Appellant has his head down on the pillow until 12:21:00 A.M. at which time he picks up the pillow and appears to put it back on the chair. This third video clip ends at approximately 12:34 A.M. (Exhibit 7)
16. The fourth video clip played and narrated by McGuiness at the Commission hearing involved the March 13-14, 2002 shift. At 12:47 A.M., the Appellant enters the work station and has in his possession a clock radio and magazines. He can be observed placing his feet (with no boots) on the desk. This video clip concludes at 1:03 A.M. at which time the Appellant is still at the desk. (Exhibit 7)

17. The fifth video clip played and narrated by McGuiness at the Commission hearing involved the March 18-19, 2002 shift. At 11:30:30 P.M., the Appellant enters the work station, turns the lights out, and puts his feet up on the desk with no boots on. This video clip runs from 11:30:30 P.M. until approximately 5:14 A.M. during which time the Appellant's feet (no boots) are on the desk. Given the angle of the camera, you are unable to see the Appellant's upper body. (Exhibit 7)
18. The sixth video clip played and narrated by McGuiness at the Commission hearing involved the March 19-20, 2002 shift. The Appellant can be observed with his feet (no boots) on the desk at approximately 11:04 P.M. At 3:50:30 A.M., the Appellant can be observed putting his head down on a pillow on the desk. His head remains on the pillow until 4:48:00 A.M. (Exhibit 7)
19. The Appellant testified before the Commission that he always performed his required duties including roll calls or shift counts. (Testimony of Appellant)
20. During his testimony before the Commission, the Appellant acknowledged taking his shirt and shoes off on some occasions in March 2002 while on duty because he wasn't feeling well and had the "chills". (Testimony of Appellant)
21. The Appellant acknowledged putting his head face down on a pillow on two occasions while on duty in March 2002, again because he was sick. (Testimony of Appellant)
22. The Appellant acknowledged bringing a pillow, magazines and a clock radio into the facility, but testified that he never brought them into any areas accessible by inmates. (Testimony of Appellant)

23. The Appellant testified before the Commission that he did not use the clock radio as an alarm, but rather, simply set the clock, because there was no clock at the work station. (Testimony of Appellant)
24. The Appellant testified that he used the work station of the vendor because the shift commander did not have any assigned work station that was available. (Testimony of Appellant)
25. DOC General Policy 1, Rule 6 (c) states in part “duties assigned to you should demand your entire attention”. (Exhibit 11)
26. DOC General Policy 1, Rule 7 (c) states, “Any DOC or institution employee who is found sleeping at his/her post during the course of their official duties, or otherwise flagrantly, wantonly, or willfully neglecting the duties and responsibilities of his/her office shall be subject to immediate discipline up to and including discharge.” (Exhibit 11)
27. DOC General Policy 1, Rule 12 (a) states in part, “Employees shall exercise constant vigilance and caution in the performance of their duties. You shall not divest yourself of responsibilities through presumption and, must familiarize yourself with assigned tasks and responsibilities including institution and DOC policies and orders.” (Exhibit 11)
28. The Appellant acknowledged receipt of DOC Rules and regulations on September 2, 1983. During his testimony before the Commission, the Appellant agreed that correction officers could be disciplined for sleeping while on duty, reading magazines from outside the facility or taking their shirt and boots off. (Exhibit 10)

29. Exhibit 12 is a list of all Unit 4 DOC employees (rank and prior discipline unknown) who were disciplined for sleeping while on duty between January 2000 and January 2005. During that time, 21 individuals were suspended for between 1 and 4 days for sleeping while on duty; 10 were suspended for between 5 and 9 days and 12 were suspended for 10 days. The Appellant was the only individual to be demoted during that time period. In his recommendation to the DOC Commissioner at the time, DOC's then-Deputy Director of Employee Relations recommended a demotion in this case "since the position of Lieutenant carries with it responsibilities of shift commander which obviously were repeatedly not adhered to." (Exhibit 12 and Exhibit 3)

CONCLUSION

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300,304 (1997). *See* Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." *Id.* at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The Commission

determines justification for discipline by inquiring, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). The Appointing Authority’s burden of proof is one of a preponderance of the evidence which is satisfied “if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there.” Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956). In reviewing an appeal under G.L. c. 31, §43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an Appellant, the Commission shall affirm the action of the Appointing Authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

In March 2002, the Appellant was “working up” in the position of Captain and was filling the role of Shift Commander at the Massachusetts Treatment Center in Bridgewater, which has a population of civilly committed sexually dangerous persons as

well as state prison inmates identified as sex offenders. Put simply, he was “in charge” of the facility while working his overnight shift from 11:00 P.M. to 7:00 A.M.

As a result of an unrelated investigation, DOC discovered that the Appellant, while on duty, was sleeping on at least two occasions, once for approximately two minutes and once for just under an hour. On three other occasions, the Appellant, while on duty, had his work boots off and shirt off and his feet up on a desk, including one time for several hours. Further, the Appellant brought a clock radio, magazines and a pillow into the facility. Based on this information, and considering that these actions took place while the Appellant was serving as Shift Commander, the Department of Correction demoted him from lieutenant to sergeant.

The Appellant does not contest the videotape evidence in this case. Rather, counsel for the Appellant makes a two-fold argument. First, the Appellant always performed his duties, including required roll calls and shift counts. Second, counsel for the Appellant argues that the penalty in this case, a demotion, is too harsh, and points to Exhibit 12 in attempt to show disparate treatment. Exhibit 12 shows that, of the 43 DOC employees disciplined for sleeping while on duty over a five-year period, only one, the Appellant, was demoted. The 42 other offenders, whose rank and prior discipline is unknown, received suspensions ranging from 1 to 10 days.

The Commission concludes that Richard Greaves, who was serving as Shift Commander of a facility with inmates deemed sexually dangerous, did indeed neglect his duties when he slept while on duty, including, on one occasion, sleeping for just under an hour. The public, particularly those living in the surrounding area, as well as the DOC

employees working in the facility, expect the individual in charge of the Treatment Center to be awake and alert at all times. Put simply, the stakes are too high, and the Shift Commander's responsibilities too serious, for DOC not to issue harsh discipline in this case "which adversely affects the public interest by impairing the efficiency of public service".

Public employees sleeping on the job, particularly in this case, simply confirm the public's worst stereotypes about lazy and inattentive government workers. The civil service laws are not meant to be a safe harbor for employees literally asleep at the switch – and they will not be in this case, despite the Appellant's lengthy employment record and commendable service to our country.

If the Commission decides to modify a penalty, it must provide explanation of its reasons for so doing, because a decision to modify shall be reversible if unsupported by the facts or based upon an incorrect conclusion of law. Faria v. Third Bristol Division of the Dist. Ct. Dep. 14 Mass. App. Ct. 985, 987 (1982). Police Commissioner of Boston v. Civil Service Commission. 39 Mass. App. Ct. 594, 602 (1996). When the Commission modifies an action taken by the appointing authority, it must remember that the power to modify penalties is granted to ensure that employees are treated in a uniform and equitable manner, in accordance with the need to protect employees from partisan political control. *Id.* at 600. Town of Falmouth v. Civil Service Commission. 61 Mass. App. Ct. 796, 801 (2000).

The Department of Correction has proven, by a preponderance of the evidence that it had just cause to discipline the Appellant and there is no evidence of inappropriate

motivations or objectives that would warrant the Commission reducing or overturning the Appellant's demotion.

For all of the above reasons, the Appellant's appeal under docket number D-02-654 is hereby *dismissed*.

Christopher C. Bowman, Commissioner

By vote of the Civil Service Commission (Goldblatt, Chairman, Guerin, Bowman, Marquis and Taylor, Commissioners) on September 21, 2006.

A true record. Attest:

Commissioner

A motion for reconsideration may be filed by either Party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under section 14 of chapter 30A in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the commission's order or decision.

Notice:
Jeffrey Bolger
Douglas I. Louison